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EXAMINER

POINVIL, FRANTZY

ART UNIT

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3691

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02/16/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 09/740,930 | Applicant(s) AUSUBEL ET AL. | |
| | Examiner Frantzy Poinvil | Art Unit 3691 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-104 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-104 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1/16/2009 have been fully considered but they are not persuasive.

This Office action is in response to the applicant's arguments filed 1/16/2009 responding to the new ground of rejection of claims 51-74, 99, 101, 103 and 104 under 35 USC 101. The Applicant also presented arguments related to the art rejection of the pending claims.

In response, the 35 USC 101 rejection has been withdrawn.

2. Applicant's representative argues that Rackson does not teach an auction system.

In response, Rackson teaches coordinating a plurality of auctions. It should be noted that most auctions include participating rules such as time to start, end and bidding period. Rackson further teaches a multiple auction system wherein a specific auction from the one of multiple auctions is selected to replicate a bid submitted by a bidder. Rackson teaches a plurality of auctions for an item contrary to appellant arguments.

Applicant then argues that Fritts does not conduct auctions or teach constraining bids. In response, most auctions have constraint in which bids are subject to the

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constraints because a number of items, time to start and end the auction and the quantities of the item to bid on cannot and should not surpass or be more than the number of available item. Thus, applicant's argument that the references taken alone or in combination fail to teach or suggest constraining bids in a given auction is not convincing.

Applicant's representative argues that the rejection does not address initiating a first auction, and a second auction. In response, both Rackson and Fritts teach conducting a plurality of auctions which must be initiated in order for the auction to start and end.

Appellant then argues that Fritts does not teach constraining bids as claimed. In response, the combination of Rackson and Fritts teaches a bidder placing at least one bid in at least one auction or in at least concurrent auctions having complementary licenses. Most auctions include a constraint relating to the start and end period of the auction and a quantity of item allowable to bid on based on the availability or quantity of the item.

Applicant's representative then argues that there appears no teaching in constraining bids in one auction based on bids on another auction. In response, Fritts teaches concurrent auctions in which a bidder may place a bid on a complementary object at another auction. The Examiner notes that if either the object in which the

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object on a first auction became unavailable, then the complementary object would be useless because both the first object and the second object are complementary to one another. Similarly, the reverse appears to be obvious or logical in the same manner. Thus, if a bid is won at an auction for a particular object in which its complementary object has not yet won, then eliminating or stopping the auction for the complementary object would have been obvious to one of ordinary skill in the art to do so as to alert the winner of the object who has greater interest of the complementary object to try to negotiate on obtaining the complementary object since winning the first object and not having the complementary object would be senseless.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackson et al (US Patent No. 6,415,270) in view of Fritts.

As per claims 51-53, 62, 75-77, 86, 99, 100 and 103, Rackson et al disclose a multi-auction service system for auctioning a plurality of different types of items. The system also comprises a plurality of computers, at least one of which is located remotely from at least one other of the computers and interconnected by a communication system. The system of Rackson further detects bids at a plurality of

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remote auction services for an item in order to replicate an optimal bid at each of the remote auction services. See the abstract. Rackson et al state that a seller may sell each of a plurality of different items as a set of items or as each individual item. See column 10, line 64 to column 11, line 8. Rackson et al further state that "the items to be auctioned may therefore be listed once at each remote auction service, more than once in different categories on a remote auction service or more than once in many categories on more than one remote auction service". See column 11, lines 46-50. Thus a bidder may bid on more than one auction for a quantity of the same or different items. Rackson et al further state:

"The method of the current invention may also be used to coordinate the purchase of more than one of the target item. In another version of the invention, relative value rules may be established where a bidder is bidding on two or more similar but not identical items and only wants a certain number. For example, where there are 2 similar stereos and the bidder says "I will pay a 10% premium for stereo B over stereo A, but never more than \$350 for either". The system will utilize this rule to identify and bid on the items sought with the rule enforcing the bidding preference. Based on the bids encountered the system may alternately bid on one or the other item as the bids progress until the close of the auction. Bidders may optionally define rules for the total price or individual price not to be exceeded for multiple items for a quantity desired such that the bidding is stopped by the multi-auction service. "

This passage emphasizes on constraining inputted bids of a first item based on bids

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placed for a second item. Rackson et al do not explicitly state that a first item is being auctioned on a first item and a second item is being auctioned on a second auction.

4. Appellant's representative has amended independent claims 51, 63, 75, 99, 100 to recite a first auction is being conducted in association with a second auction of a second set of items, the first set of items being different from the second set of items and argue that such is not present in Rackson et al.

Appellant's representative then argues that Rackson et al do not describe any relation between auctions of different items nor describe constraining the received bids by accepting only bids which satisfy a constraint based on bids in the second auction.

In response, Rackson et al disclose auctioning a plurality of items. Rackson et al state that "if the items are different but make up a set, they would probably be sold together. Alternatively the items could be auctioned separately (implying at least a first auction auctioning a first item and a second auction auctioning a second item) where each item would be described for sale individually at step 120. If the items were the same, different auction methods could be employed to maximize the final auction price of the items. In one method, one item at a time could be released to remote auction services to be auctioned". Rackson et al do not explicitly state constraining bids by accepting only bids which satisfy a constraint based on bids in the second auction. Fritts discusses a method for auctioning communications spectrum. Fritts further discusses performing a first and a second auction of communication licenses using a computerized system. See page 13 of the discussion of Fritts. Fritts also teaches constraining bids by accepting only bids which satisfy a constraint based on bids in the second auction. Fritts

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states that "strong synergies exist among licenses and preferences by bidders". See also page 13 of Fritts. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Fritts into Rackson et al in order to allow bidders to bid on a first item being auctioned at a first auction and a second item being auctioned at a second auction thereby providing a system in which bidders may bid on compatible products/services in one stop or system.

Steps of assigning the first set of items to bidders based on the bids in force at the time the computer-implemented auction was terminated is routinely done in most auction systems as such would have been obvious for one of ordinary skill in the art to do in the system of Rackson et al and Fritts in order to provide winners their winning items.

As per claims 61, 85, Rackson et al disclose various options for terminating an auction. If no new bids are submitted, the auction may be terminated based on the currently submitted bid or time. Also, in the system of Rackson et al., new bidding information is being transmitted to bidders in the event that the computer-implemented auction is not terminated.

As per claims 54-60 and 78-84, the teachings of Rackson et al are discussed above. Rackson et al do not explicitly state the items in the second set are communication licenses and items in the first set are clearing rights related to communications licenses or the items are airport landing rights.

Granting of a first license that requires another license is well known in the art of communication and that one license may work in complement with another license. See the , teachings of Brian Frits at page 13 of the article entitled "Private property, economic efficiency and spectrum policy in the wake of the C block auction". Having complementary objects as taught by Frits in the system of Rackson et al would have been obvious to one of ordinary skill in the art at the time of the invention in order to increase the efficiency of auction allocation and to allow an entity to enter a package bid for a group of associated licenses.

As per claims 63-74, 87-98, 101,102 and 104, the teachings of Rackson et al and Frits are discussed above. These claims contain features recited in the claims 51-60 and these claims are rejected under a similar rationale applied therein. Thus, appellant is directed to the above noted rejection.

Claims 63 and 87, 101,102 and 104 have been amended to recite a function of "eliminating each of the conditional bids which fail to satisfy any of their conditions, and thereafter assigning the first set of items to bidders in force subsequent to the eliminating of the conditional bids which fail to satisfy any of their conditions". As per this limitation, both Rackson et al and Frits discuss various bidding rules. The examiner asserts that if a conditional bid does not satisfy a certain bidding rule or requirement, eliminating each of the conditional bids which fail to satisfy certain conditions and thereafter assigning the first set of items to bidders based on bids in force subsequent to the eliminating function would have been obvious to one of ordinary skill in the art to

do because only bidders satisfying all requirements and while placing a proper bid would have been awarded the bidden items.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (571) 272-6797. The examiner can normally be reached on Monday-Thursday from 7:00AM to 5:30PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantzy Poinvil/
Primary Examiner, Art Unit 3691

/FP/
February 2, 2011